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**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1432-21**

ROSEMARY SAMMARCO,

Plaintiff-Appellant,

v.

THOMAS SAMMARCO,

Defendant-Respondent.

Argued January 30, 2023 – Decided February 13, 2023

Before Judges Mawla and Smith.

On appeal from the Superior Court of New Jersey,
Chancery Division, Family Part, Bergen County,
Docket No. FM-02-1177-97.

Douglas J. Kinz argued the cause for appellant.

Thomas Sammarco, respondent, argued the cause pro
se.

PER CURIAM

Plaintiff Rosemary Sammarco appeals the Family Part's December 6, 2021
post-judgment order terminating defendant Thomas Sammarco's alimony

obligation without a plenary hearing. Defendant sought termination of alimony based on his reaching retirement age. The trial court terminated defendant's alimony obligations pursuant to N.J.S.A. 2A:34-23(j), placing its reasons on the record, but misapplying the law. We reverse and remand.

After a trial, plaintiff and defendant were divorced pursuant to a Final Judgement of Divorce (FJOD) entered in Bergen County on June 25, 1999.

Paragraph two of the FJOD reads as follows:

Alimony: Commencing June 1, 1999[,] and continuing until May 31, 2000, . . . [defendant] shall pay . . . [plaintiff] alimony in the amount of \$150[] per week, which payments shall be made through . . . [defendant]'s existing Bergen County [p]robation account by way of wage execution against his employment earnings. Commencing June 1, 2000[,] . . . [defendant] shall pay permanent alimony to . . . [plaintiff] in the amount of \$118[] per week, which payments shall also be made through the Bergen County Probation Department by way of a wage execution.

Paragraph two of the FJOD remained in place until May 2021 when defendant moved to terminate alimony on three grounds: he was seventy-four years old, and beyond retirement age; he had been unemployed since March 2020, surviving solely on his Social Security; and he had medical issues, which hindered his ability to work. Plaintiff opposed and filed a cross-motion seeking unpaid alimony and counsel's fees.

On July 30, 2021, the Family Part denied defendant's motion without prejudice because defendant failed to produce his pre-divorce case information statement (CIS). Defendant renewed his motion in September 2021, attaching the missing CIS.

On December 6, 2021, the Family Part issued an order granting defendant's motion to terminate alimony without a plenary hearing. The court made findings in a written statement of reasons appended to the order. It applied the facts in the record to N.J.S.A. 2A: 34-23(j). Focusing on subsection (j)(1), the court found plaintiff failed to overcome the rebuttable presumption that defendant's alimony was to terminate upon his reaching full retirement age. It considered various statutory factors under subsection (j)(1): the age of the parties at various times, including their marriage, their divorce, and the defendant's application for retirement; whether defendant had reached full retirement age; the degree and duration of plaintiff's economic dependency during their marriage; the ability of plaintiff to save for her retirement; whether plaintiff gave up certain marital rights or property in exchange for a longer alimony award; the duration of alimony already paid; assets of the parties at the time of defendant's retirement application; and the earned and unearned income sources for both parties.

On appeal, plaintiff argues that the Family Part used the wrong statutory criteria under N.J.S.A. 2A:34-23(j) to decide the matter. She contends that if the correct statutory criteria were applied, she would prevail over defendant on the merits. Finally, she argues that, assuming defendant established a prima facie case, the Family Part erred by not permitting discovery before issuing its order.

"We invest the family court with broad discretion because of its specialized knowledge and experience in matters involving parental relationships and the best interests of children." N.J. Div. of Youth & Fam. Servs. v. F.M., 211 N.J. 420, 427 (2012). It follows that "we accord great deference to discretionary decisions of Family Part judges." Milne v. Goldenberg, 428 N.J. Super. 184, 197 (App. Div. 2012) (citing Donnelly v. Donnelly, 405 N.J. Super. 117, 127 (App. Div. 2009)). "We review the Family Part judge's findings in accordance with a deferential standard of review, recognizing the court's 'special jurisdiction and expertise in family matters.'" Thieme v. Aucoin-Thieme, 227 N.J. 269, 282-83 (2016) (quoting Cesare v. Cesare, 154 N.J. 394, 413 (1998)). Our deference to a trial court's findings of fact applies "when supported by adequate, substantial, credible evidence." Cesare, 154 N.J. at 411-12 (citing Rova Farms Resort, Inc. v. Inv. Ins. Co., 65

N.J. 474, 484 (1974)); see also Gnall v. Gnall, 222 N.J. 414, 428 (2015). "Thus, 'findings by the trial court are binding on appeal when supported by adequate, substantial, credible evidence.'" Thieme, 227 N.J. at 283 (quoting Cesare, 154 N.J. at 411-12).

"As to issues of law, however, our review is de novo: '[a] trial court's interpretation of the law and the legal consequences that flow from established facts are not entitled to any special deference.'" Rowe v. Bell & Gossett Co., 239 N.J. 531, 552 (2019) (alteration in original) (citing Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995)).

The decision of a family court to modify alimony is reviewed under an abuse of discretion standard. Spangenberg v. Kolakowski, 442 N.J. Super. 529, 536 (App. Div. 2015); Larbig v. Larbig, 384 N.J. Super. 17, 23 (App. Div. 2006). The standard of review of an alimony award is narrow—a trial court has broad, but not unlimited, discretion, which must take into account the factors set forth in N.J.S.A. 2A:34-23(b) and case law. Steneken v. Steneken, 367 N.J. Super. 427, 434-35 (App. Div. 2004), aff'd as modified, 183 N.J. 290 (2005); J.E.V. v. K.V., 426 N.J. Super. 475, 485 (App. Div. 2012). The Legislature has left applications to modify alimony to the broad discretion of trial judges. Crews v.

Crews, 164 N.J. 11, 24 (2000); Storey v. Storey, 373 N.J. Super. 464, 470 (App. Div. 2004).

A trial court's findings regarding alimony should not be vacated unless the court clearly abused its discretion, failed to consider all of the controlling legal principles, made mistaken findings, or reached a conclusion that could not reasonably have been reached on sufficient credible evidence present in the record after considering the proofs as a whole.

[J.E.V., 426 N.J. Super. at 485 (citing Heinl v. Heinl, 287 N.J. Super. 337, 345 (App. Div. 1996)); see also Reese v. Weis, 430 N.J. Super. 552, 567 (App. Div. 2013).]

Here, the trial court, in its written statement of reasons, professed to analyze the facts under N.J.S.A. 2A:34-23(j)(2) and (3) but did not do so. Instead, it drew upon the factors found in N.J.S.A. 2A:34-23(j)(1) to determine whether defendant's alimony obligation should terminate. The trial court wrote:

[T]he [c]ourt must . . . analyze a set of factors under N.J.S.A. 2A:34-23(j)[(2)-(3)]. Here, the [d]efendant is age[d seventy-four], drawing his only income from social security, speaking directly to factors [(a)-(b)] and (h). Regarding factor (c), the [p]laintiff was, during the divorce proceedings, in school; [p]laintiff is now gainfully employed. Plaintiff has had the opportunity to adequately save[] for retirement, relevant under factor (j), and, in fact, appears to have done so. Regarding factor (d), the [p]laintiff accepted the marital home in exchange for arrears being forgiven. Although [p]laintiff relinquished some substantial claims in that exchange, [d]efendant has been paying alimony for

[twenty-two] years, speaking directly to factor (e), and his health is deteriorating, speaking directly to factor (f). The majority of [d]efendant's net worth comes from the sale of his deceased mother's home, making factor (g) of little consequence. Relevant to factor (i), [d]efendant's current income comes solely from his [s]ocial [s]ecurity, while [p]laintiffs income comes from her current part-time employment. Plaintiff has failed to overcome the rebuttal presumption of good-faith retirement.

[(Emphasis added).]

A review of N.J.S.A. 2A:34-23(j) reveals that the factors the court referenced in its written statement come from subsection (j)(1). It reads:

There shall be a rebuttable presumption that alimony shall terminate upon the obligor spouse or partner attaining full retirement age, except that any arrearages that have accrued prior to the termination date shall not be vacated or annulled. The court may set a different alimony termination date for good cause shown based on specific written findings of fact and conclusions of law.

The rebuttable presumption may be overcome if, upon consideration of the following factors and for good cause shown, the court determines that alimony should continue:

- (a) The ages of the parties at the time of the application for retirement;
- (b) The ages of the parties at the time of the marriage or civil union and their ages at the time of entry of the alimony award;

(c) The degree and duration of the economic dependency of the recipient upon the payor during the marriage or civil union;

(d) Whether the recipient has foregone or relinquished or otherwise sacrificed claims, rights or property in exchange for a more substantial or longer alimony award;

(e) The duration or amount of alimony already paid;

(f) The health of the parties at the time of the retirement application;

(g) Assets of the parties at the time of the retirement application;

(h) Whether the recipient has reached full retirement age as defined in this section;

(i) Sources of income, both earned and unearned, of the parties;

(j) The ability of the recipient to have saved adequately for retirement; and

(k) Any other factors that the court may deem relevant.

[N.J.S.A. 2A:34-23(j)(1).]

The trial court's statement of reasons supporting its termination order clearly and mistakenly draws upon the (j)(1) factors above.

Subsection (j)(3) reads:

When a retirement application is filed in cases in which there is an existing final alimony order or enforceable written agreement established prior to the effective date of this act, the obligor's reaching full retirement age as defined in this section shall be deemed a good faith retirement age. Upon application by the obligor to modify or terminate alimony, both the obligor's application to the court for modification or termination of alimony and the obligee's response to the application shall be accompanied by current [CISs] or other relevant documents as required by the Rules of Court, as well as the [CIS] or other documents from the date of entry of the original alimony award and from the date of any subsequent modification. In making its determination, the court shall consider the ability of the obligee to have saved adequately for retirement as well as the following factors in order to determine whether the obligor, by a preponderance of the evidence, has demonstrated that modification or termination of alimony is appropriate:

- (a) The age and health of the parties at the time of the application;
- (b) The obligor's field of employment and the generally accepted age of retirement for those in that field;
- (c) The age when the obligor becomes eligible for retirement at the obligor's place of employment, including mandatory retirement dates or the dates upon which continued employment would no longer increase retirement benefits;
- (d) The obligor's motives in retiring, including any pressures to retire applied by

the obligor's employer or incentive plans offered by the obligor's employer;

(e) The reasonable expectations of the parties regarding retirement during the marriage or civil union and at the time of the divorce or dissolution;

(f) The ability of the obligor to maintain support payments following retirement, including whether the obligor will continue to be employed part-time or work reduced hours;

(g) The obligee's level of financial independence and the financial impact of the obligor's retirement upon the obligee; and

(h) Any other relevant factors affecting the parties' respective financial positions.

[N.J.S.A. 2A:34-23(j)(3).]

N.J.S.A. 34-23(j)(3) applies to motions to terminate alimony where the FJOD was issued prior to September 10, 2014, the effective date of sections (j)(1)-(3). That is the case here. Because the parties' FJOD was entered in 1999, it follows that the trial court should have applied N.J.S.A. 2A:34-23(j)(3). Had it done so, the court would not have required plaintiff to overcome a rebuttable presumption that defendant's alimony should terminate. Because we do not

defer the Family Part's interpretation of the law, we find its order terminating defendant's alimony to be in error. Rowe, 239 N.J. at 552.

We turn briefly to plaintiff's claim that the trial court erred by failing to permit discovery prior to issuing its order.

"When presented with competing certifications that create a genuine dispute about material facts, a judge is not permitted to resolve the dispute on the papers; the judge must allow for discovery and if, after discovery, the material facts remain in dispute, conduct an evidentiary hearing." Temple v. Temple, 468 N.J. Super. 364, 368 (2021).

On remand, the Family Part shall conduct a case management conference within thirty days. After the conference, the court shall issue a case management order establishing an expedited discovery schedule in order to ready this matter for a timely resolution, be it by plenary or otherwise.

Reversed and remanded. We do not retain jurisdiction.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.



CLERK OF THE APPELLATE DIVISION